

ESHB 1539 - S COMM AMD

By Committee on Water, Energy & Environment

NOT ADOPTED 4/11/05

1 On page 1, line 4, strike everything after the enacting clause and
2 insert:

3 "Sec. 1. RCW 19.122.055 and 2001 c 238 s 5 are each amended to
4 read as follows:

5 (1)(a) Any person who fails to notify the one-number locator
6 service when required under this chapter, excavates within thirty-five
7 feet of a transmission pipeline, and causes damage to the transmission
8 pipeline is guilty of a gross misdemeanor.

9 (b) Any person who fails to notify the one-number locator service
10 when required under this chapter and excavates within thirty-five feet
11 of a transmission pipeline is guilty of a misdemeanor.

12 (c) Any person who fails to notify the one-number locator service
13 and causes damage to a hazardous liquid or gas pipeline is subject to
14 a civil penalty of not more than ten thousand dollars for each
15 violation. The civil penalty may also be imposed on any person
16 violating (a) or (b) of this subsection.

17 (2) All fines and civil penalties recovered under this section
18 shall be deposited into the pipeline safety account created in RCW
19 81.88.050.

20 **Sec. 2.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to read
21 as follows:

22 (1) Any person who violates any provision of this chapter not
23 amounting to a violation of RCW 19.122.055, and which violation results
24 in damage to underground facilities, is subject to a civil penalty of
25 not more than one thousand dollars for each violation. All penalties
26 recovered in such actions shall be deposited in the general fund.

27 (2) Any excavator who willfully or maliciously damages a field-
28 marked underground facility shall be liable for treble the costs
29 incurred in repairing or relocating the facility. In those cases in
30 which an excavator fails to notify known underground facility owners or
31 the one-number locator service, any damage to the underground facility

1 shall be deemed willful and malicious and shall be subject to treble
2 damages for costs incurred in repairing or relocating the facility.

3 (3) This chapter does not affect any civil remedies for personal
4 injury or for property damage, including that to underground
5 facilities, nor does this chapter create any new civil remedies for
6 such damage.

7 **Sec. 3.** RCW 19.122.020 and 2000 c 191 s 15 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter:

11 (1) "Business day" means any day other than Saturday, Sunday, or a
12 legal local, state, or federal holiday.

13 (2) "Damage" includes the substantial weakening of structural or
14 lateral support of an underground facility, penetration, impairment, or
15 destruction of any underground protective coating, housing, or other
16 protective device, or the severance, partial or complete, of any
17 underground facility to the extent that the project owner or the
18 affected utility owner determines that repairs are required.

19 (3) "Emergency" means any condition constituting a clear and
20 present danger to life or property, or a customer service outage.

21 (4) "Excavation" means any operation in which earth, rock, or other
22 material on or below the ground is moved or otherwise displaced by any
23 means, except the tilling of soil less than twelve inches in depth for
24 agricultural purposes, or road and ditch maintenance that does not
25 change the original road grade or ditch flowline.

26 (5) "Excavator" means any person who engages directly in
27 excavation.

28 (6) "Gas" means natural gas, flammable gas, or toxic or corrosive
29 gas.

30 (7) "Hazardous liquid" means: (a) Petroleum, petroleum products,
31 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
32 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities
33 and transportation commission may by rule incorporate by reference
34 other substances designated as hazardous by the secretary of
35 transportation.

36 (8) "Identified facility" means any underground facility which is
37 indicated in the project plans as being located within the area of
38 proposed excavation.

1 (9) "Identified but unlocatable underground facility" means an
2 underground facility which has been identified but cannot be located
3 with reasonable accuracy.

4 (10) "Locatable underground facility" means an underground facility
5 which can be field-marked with reasonable accuracy.

6 (11) "Marking" means the use of stakes, paint, or other clearly
7 identifiable materials to show the field location of underground
8 facilities, in accordance with the current color code standard of the
9 American public works association. Markings shall include
10 identification letters indicating the specific type of the underground
11 facility.

12 (12) "Person" means an individual, partnership, franchise holder,
13 association, corporation, a state, a city, a county, or any subdivision
14 or instrumentality of a state, and its employees, agents, or legal
15 representatives.

16 (13) "Pipeline" or "pipeline system" means all or parts of a
17 pipeline facility through which hazardous liquid or gas moves in
18 transportation, including, but not limited to, line pipe, valves, and
19 other appurtenances connected to line pipe, pumping units, fabricated
20 assemblies associated with pumping units, metering and delivery
21 stations and fabricated assemblies therein, and breakout tanks.
22 "Pipeline" or "pipeline system" does not include process or transfer
23 pipelines as defined in RCW 81.88.010.

24 (14) "Pipeline company" means a person or entity constructing,
25 owning, or operating a pipeline for transporting hazardous liquid or
26 gas. A pipeline company does not include: (a) Distribution systems
27 owned and operated under franchise for the sale, delivery, or
28 distribution of natural gas at retail; or (b) excavation contractors or
29 other contractors that contract with a pipeline company.

30 (15) "Reasonable accuracy" means location within twenty-four inches
31 of the outside dimensions of both sides of an underground facility.

32 (16) "Transmission pipeline" means a pipeline that transports
33 hazardous liquid or gas within a storage field, or transports hazardous
34 liquid or gas from an interstate pipeline or storage facility to a
35 distribution main or a large volume hazardous liquid or gas user, or
36 operates at a hoop stress of twenty percent or more of the specified
37 minimum yield strength.

38 (17) "Underground facility" means any item buried or placed below
39 ground for use in connection with the storage or conveyance of water,

1 sewage, electronic, telephonic or telegraphic communications,
2 cablevision, electric energy, petroleum products, gas, gaseous vapors,
3 hazardous liquids, or other substances and including but not limited to
4 pipes, sewers, conduits, cables, valves, lines, wires, manholes,
5 attachments, and those parts of poles or anchors below ground. This
6 definition does not include pipelines as defined in subsection (13) of
7 this section, but does include distribution systems owned and operated
8 under franchise for the sale, delivery, or distribution of natural gas
9 at retail.

10 ((~~17~~)) (18) "One-number locator service" means a service through
11 which a person can notify utilities and request field-marking of
12 underground facilities."

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EFFECT: Creates two categories of offenses for unauthorized excavations near transmission pipelines. Reduces the call-before-you-dig zone down from 50 feet to 35 feet. Clarifies the civil penalties.